



April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0249 Room 2092-S
1400 Independence Ave., SW
Washington, DC 20250-0249

**Re: Country of Origin Labeling Regulations under the Farm Security and Rural
Investment Act of 2002 [DOCKET No. LS-02-13]**

Dear Mr. Secretary:

The National Fisheries Institute (NFI) is pleased to submit these comments regarding future country of origin labeling requirements. These comments are addition to comments NFI submitted jointly with the American Frozen Food Institute (AFFI), Grocery Manufacturer's of America (GMA), and National Food Processors Association (NFPA) under separate cover.

The NFI is the national trade association for the diverse fish and seafood industry of the United States. The NFI's 700 members come from all sectors of the fish and seafood industry including fishing vessel owners, aquaculturalists, processors, importers, exporters, distributors, retailers, and restaurants. Since 1945, the NFI has been committed to providing consumers with ample, safe, sustainable, and diverse fish and seafood choices.

As articulated in the joint letter with the AFFI, GMA, and NFPA, the NFI believes:

1. Mixed processed food products (such as a seafood medley bag) are outside the scope of Subtitle D of the Farm Security & Rural Investment Act of 2002 (Subtitle D) and should not therefore be subject to mandatory country of origin labeling requirements;
2. Labeling of products as to the country where processing occurred is beyond the scope of Subtitle D and should not therefore be required;
3. All frozen seafood products should be exempt from the mandatory country of origin labeling regulations; and
4. Requirements that multiple countries of origin be listed in the order of predominance by weight are impractical and burdensome and are not required by Subtitle D.

In addition, the NFI believes:

5. Exempted seafood products need further clarification
6. The distinction between wild and farm-raised seafood requires additional study because certain coastal shellfish could be classified in either category.
7. The labeling of co-mingled similar wild and farm-raised product requires flexibility.
8. USDA needs to hold listening sessions in fishing communities and major import ports

1. Mixed Processed Food Products Are Outside The Scope of Subtitle D

The NFI believes that mixed processed food products such as a seafood medley bag containing scallops, squid, and shrimp, should be exempt from mandatory country of origin labeling requirements since these products constitute a processed food item containing seafood as an ingredient and Subtitle D expressly excludes “ingredients in a processed food item” from mandatory labeling. The preparation for retail sale of a seafood medley bag and like products involves specific processing steps. The fact that the seafood ingredients in this mixed processed seafood product can be “separately identified” is irrelevant. They nonetheless constitute “ingredients in a processed food item”.

2. Labeling of Products as to the Country Where Processing Occurred is Beyond the Scope of Subtitle D

Subtitle D requires certain covered commodities to be labeled as to country of origin. The statute simply does not authorize the USDA to require other forms of labeling such as country of processing. While this information maybe something that individual firms voluntarily choose to place on their products, it should not be a required part of the mandatory labeling requirements.

3. All Frozen Seafood Products Should Be Exempt from Mandatory Country of Origin Labeling

The NFI believes that frozen seafood products are not covered by Subtitle D since:

- Frozen seafood products are of necessity “processed food items”;
- The raw fish used to make these products is of necessity “an ingredient”;
- Legislative history indicates the law was intended to apply to products currently not covered under Section 304 of the 1930 Tariff Act and frozen seafood products are so covered;
- Legislative history indicates the law does not apply to frozen seafood since an amendment to explicitly include frozen seafood under Subtitle D of the Farm Security & Rural Investment of 2002 was not adopted.

4. Multiple Countries of Origin Should Not Be Required to Be Listed by Order of Predominance of Weight

A requirement to list multiple countries of origin by order of predominance of weight is an utterly impractical requirement. It would require massive operational inefficiencies in the production and processing of seafood products containing fish and shellfish from multiple countries and provide no meaningful additional information to consumers. Elimination of this requirement would significantly reduce the recordkeeping and regulatory compliance burdens of the U.S. seafood industry.

To address the USDA concern of a firm using *de minimus* U.S. goods in a product and then listing the U.S. first in the list of countries of origin, the USDA could recommend an alphabetical listing of multiple countries of origin.

For additional information on these points, please reference the joint letter submitted to USDA by the AFFI, GMA, NFPA, and the NFI.

5. Exempted Seafood Products Need Further Clarification

The “Guidelines for an Interim Voluntary Country of Origin Labeling of...Fish...” promulgated by the USDA indicate that all “cooked and canned fish products such as canned tuna and canned sardines, and restructured fish products such as fish sticks and surimi, are excluded. Similarly, processed products where the fish or shellfish is an ingredient, such items as sushi, crab salad, and clam chowder, are excluded”. The NFI strongly supports these exclusions. However, the NFI feels these exclusions need important clarifications.

Any mandatory country of origin labeling regulations must make it clear that either cooked **or** canned fish products are exempt from mandatory country of origin labeling requirements in order to clarify that the seafood product must meet one or the other of these conditions, not both, in order to be exempt.

Further, the examples of product forms provided in the voluntary guidelines as examples of exempt products offer some insight into the types of seafood products exempt as either restructured fish products or processed products where the fish or shellfish in an ingredient. However, in the absence of further clarification, there will be considerable confusion as to whether particular product forms are exempt or not given the diverse array of products produced by the fish and seafood industry.

Therefore, any regulations to implement mandatory country of origin labeling requirements must articulate those seafood products forms that will be exempt from the requirements. The NFI strongly advocates the following list of exempt products:

- All Frozen Seafood
- All Canned Seafood

- All Cooked Seafood
- All Smoked Seafood, Hot or Cold
- All Restructured Fish Products, including:
 - Battered and Breaded Products, including fish sticks, portions, and shrimp,
 - Battered Products,
 - Stuffed Products,
 - Crumb-Topped Products,
 - Grill-Marked Products,
 - Seasoned Products,
 - Seasoning-Glazed Products,
 - Salted or Dried Products,
 - Marinated Products,
 - Pickled Products,
 - Sushi Products,
 - Burger/Cake/Fritter Products, and
 - Surimi;
- All Processed Products Where the Fish or Shellfish is an Ingredient, including:
 - Salads,
 - Soups, Stews, and Chowders,
 - Dips/Spreads
 - Sauces
 - Pâtés
 - Prepared meals, including casseroles, dinners, entrees, bowls, and shrimp cocktail, and
 - Recipe products, including deviled crab, fritters, dumplings, sausages, and gefilte fish.

6. The Distinction Between Wild and Farm-Raised Seafood Requires Additional Study

In addition to country of origin labeling, Subtitle D requires fish and shellfish to be labeled as either “wild” or “farm-raised”. While for many seafood products the distinction between wild and farm-raised products is easy to identify, coastal shellfish operations, in particular, could be characterized as either category.

Many coastal shellfish operations involve the staking, claiming, leasing, outright ownership, or other form of reservation for exclusive use of shellfish beds in open water systems. The fact that the production from these beds is harvested from these open water systems could suggest that these products fall under the definition of “wild” shellfish. However, the fact these beds have been reserved for exclusive use in some manner may suggest that they have been removed from the “wild” domain and the products therefore considered “farm-raised”.

In addition, some of these shellfish beds may be cultivated, manipulated, or otherwise developed with aquaculture-based practices further suggesting the products are “farm-

raised". Yet again, municipalities or other "public" entities conduct some of this cultivation for the benefit of a public fishery thereby suggesting the products are "wild".

This is clearly a confusing area and one that will need considerable clarification by the USDA in any final regulations. It is imperative that the USDA consult with coastal shellfish growers throughout the country to draw fair and practicable distinctions between "wild" and "farm-raised" coastal shellfish. The NFI recommends that USDA consult with the Molluscan Shellfish Institute, Maine Aquaculture Association, Gulf Oyster Industry Council, Pacific Coast Shellfish Growers Association, and the newly forming East Coast Shellfish Growers Association, as well as individual coastal shellfish operations, to develop the requirements in this complicated area. The USDA may also want to consider utilizing the Interstate Shellfish Sanitation Conference (ISSC) as a means of communicating with the national community of coastal shellfish producers. Although the ISSC is a public health organization and country of origin labeling is not within their jurisdiction, the meetings of the ISSC bring all of the major coastal shellfish stakeholders together, providing the USDA an excellent opportunity to consult with this community.

7. The labeling of commingled similar wild and farm-raised product requires flexibility

Consistent with our comments regarding the impracticality of identifying multiple countries of origin by order or predominance by weight (Comment #1), the identification of similar "wild" and "farm-raised" products in a commingled product requires flexibility. Subtitle D requires fish and shellfish to be labeled as to country of origin in one instance and as either "wild" or "farm-raised" in another instance. The statute does not require the labeling of these characteristics to be made in combination, nor is it practical to do so. The labeling of seafood products as to country of origin and as either "wild" or "farm-raised" should be construed as separate and distinct labeling requirements.

Separating these labeling requirements will provide consumers with the information that the statute seeks to provide them without creating an impractical and operationally burdensome labeling requirement. Further, this labeling requirement should allow for product to be labeled as "wild", "farm-raised", or "wild and farm-raised" as appropriate. To do otherwise will greatly complicate the recordkeeping and other compliance-related burdens on the fish and seafood industry and require, frequent, costly labeling changes.

8. USDA Needs to Hold Listening Sessions in Fishing Communities and Major Import Ports

The NFI appreciates the efforts of the USDA to reach out to the affected communities through regional Listening Sessions. Unfortunately, the slate of USDA listening sessions to date has focused on traditional agricultural communities. The USDA needs to hold listening sessions in fishing communities throughout the United States in order to better understand the impacts of mandatory country of origin labeling on the fish and seafood industry.

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Further, the USDA should hold listening sessions in major U.S. importing ports, such as Los Angeles, Miami, Seattle, and New York in order to hear the thoughts and concerns of U.S. importers.

Thank you once again for the opportunity to submit these comments.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Justin LeBlanc", with a stylized, flowing script.

Justin LeBlanc
Vice President
Government Relations
National Fisheries Institute